

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARGARET PRESTON and DEPARTMENT OF THE NAVY,
NAVAL WEAPONS CENTER, China Lake, CA

*Docket No. 03-1317; Submitted on the Record;
Issued August 15, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant has established that she sustained a recurrence of disability causally related to her July 7, 1995 employment injury.

On July 7, 1995 appellant, then a 52-year-old program support specialist, injured her low back when she slipped and fell while in the performance of duty. She stopped work on July 7, 1995 and returned to full duty on July 10, 1995.¹ The Office of Workers' Compensation Programs accepted that the July 7, 1995 fall caused subluxations at C5-7 and L4-5. Appellant filed a notice of recurrence of disability (Form CA-2a), on November 22, 2001 noting that the date of the recurrence was "ongoing" with pain in her arms and back due to the July 7, 1995 accident.² She stated that she had not sustained any injuries since the original injury that would have caused her problems.

In support of her recurrence of disability claim, appellant submitted medical evidence including a December 8, 2000 magnetic resonance image (MRI) scan of the cervical spine, in which Dr. Michael M. Shahangian, a Board-certified radiologist, noted marked disc protrusion at C3-4 and a three millimeter (mm) disc central disc protrusion without canal or foramina stenosis. A September 21, 2001 MRI of the lumbar spine, read by Dr. Brenda Safranko, a Board-certified radiologist, demonstrated a one mm annulus bulge at L2-3, a narrowed disc at L3-4 with a mild

¹ In a July 7, 1995 report, Dr. Bradley W. de Geus, a chiropractor, noted that x-rays of the cervical spine showed a subluxation of C4 on C5 and that x-rays of the lumbar spine showed a subluxation of L4 and L5. He also checked the box "yes" in response to whether his findings were consistent with appellant's account of the injury. In a separate form, Dr. de Geus diagnosed cervical spondylosis and lumbosacral disorder and indicated that appellant could return to work on July 10, 1995. In an August 15, 1995 report, he discharged appellant as cured and stated that she could return to full duty with no limitations or restrictions.

² The record reflects that appellant previously filed a notice of recurrence of disability (Form CA-2a), on March 19, 1996. She identified the date of recurrence of disability as ongoing and related to the July 7, 1995 employment injury. The Office denied the claimed recurrence of disability by decision dated July 2, 1996.

spinal stenosis, a narrowed disc and right paracentral disc protrusion at L4-5. In a July 27, 2001 report, Dr. Robert Audell, a Board-certified orthopedic surgeon, noted that appellant had sustained injuries to the neck and upper extremities as a result of her federal employment. He stated that appellant had undergone bilateral carpal tunnel releases but continued with fairly substantial upper extremity symptoms. Dr. Audell noted the MRI results of the neck and back and indicated that it was apparent that appellant had a herniated disc at C3-4, as well as problems at other levels in the cervical spine and opined that they had contributed to her upper extremity problems. He indicated: “[Appellant] has informed me that she has had a prior industrial injury to the neck and back in July of 1995, which was appropriately reported at that time. Based upon the information made available to me, it is my opinion that this injury is the most likely cause of her ongoing neck and back symptoms and her neck problems are probably causing her ongoing upper extremity symptoms which were not cured by the carpal tunnel release surgery....”

By letter dated December 13, 2001, the Office requested that appellant submit a report from her doctor which included an explanation as to the causal relationship between her current condition and the July 7, 1995 injury.

In a decision dated February 1, 2002, the Office denied appellant’s claim for recurrence of disability. The Office noted that appellant did not respond to the December 13, 2001 letter. By letter dated February 5, 2002, appellant requested a hearing, which was held on August 13, 2002.³

At the hearing appellant submitted an August 8, 2002 report from Dr. John Kayvanfar, a Board-certified orthopedic surgeon, who indicated that he first saw her for back pain on July 19, 2002 with a follow-up examination on August 6, 2002. He stated that appellant was currently continuing to receive treatment for her back and opined that “after examining [appellant], reviewing her history and the report from Dr. de Geus (D.C.), I find her current condition is related to the injury sustained at work on July 7, 1995, when she slipped on the tiled floor in the hallway.”

By decision dated October 24, 2002, the Office hearing representative affirmed the February 1, 2002 decision.

The Board finds that appellant has not met her burden of proof in establishing that she sustained a recurrence of disability causally related to the July 7, 1995 employment injury.

An individual who claims a recurrence of disability, due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the

³ At the hearing appellant noted that she suffered a whiplash injury to her neck in a car accident when she was 18 years old and began chiropractic treatment. She stated that she was being treated by Dr. de Geus with periodic adjustments of her neck, back and hip at the time of the July 7, 1995 accident and after he discharged her on August 7, 1995 she continued her periodic visits. Appellant indicated that Dr. de Geus subsequently moved out of the country and his records had been destroyed, wherein she began seeing another chiropractor. She testified that her main problem was her low back and that her low back problems had been ongoing for some time.

accepted injury.⁴ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.⁵ An award of compensation may not be made on the basis of surmise, conjecture or speculation or on appellant's unsupported belief of causal relation.⁶

In this case, the Office accepted that appellant sustained subluxations at C5-7 and L4-5. She filed a notice of recurrence of disability on November 22, 2001. The Office requested that appellant provide medical evidence that would establish a causal relationship between her current conditions and her present disability. She did not submit any reasoned medical evidence that her present condition was causally related to her July 7, 1995 employment injury, *i.e.*, appellant did not submit a medical report, in which her treating physician explained why her claimed condition was related to the July 7, 1995 accepted injury.

In his July 27, 2001 report, Dr. Audell indicated that appellant's accepted injury was the most likely cause of her ongoing neck and back symptoms. However, he did not provide any explanation or medical evidence in any of his reports explaining why the present condition was causally related to the July 7, 1995 employment injury. Appellant's chiropractor, Dr. de Geus, had discharged her as cured on August 15, 1995 with no restrictions. The Board finds that, without any further explanation or rationale, Dr. Audell's report is insufficient to establish a causal relationship. Further, his opinion was speculative and an opinion which is speculative in nature has limited probative value in determining the issue of causal relationship.⁷ Likewise, in his August 8, 2002 report, Dr. Kayvanfar merely opined that appellant's neck and back conditions were related to the accepted employment injury. His report, however, did not contain an explanation regarding the specific factors of employment that caused her cervical and lumbar conditions. Dr. Kayvanfar report is, therefore, insufficient to establish causal relationship between the July 7, 1995 employment injury and the claimed disability.⁸ Appellant also submitted several radiology reports. These reports did not contain an opinion regarding the cause of appellant's condition or disability and are, therefore, insufficient to establish that she sustained a recurrence of disability.

⁴ *Lourdes Davila*, 45 ECAB 139 (1993); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

⁵ *Helen K. Holt*, 50 ECAB 279 (1999).

⁶ *Michael E. Smith*, 50 ECAB 313 (1999).

⁷ *Jennifer L Sharp*, 48 ECAB 209 (1996).

⁸ *See Gloria J. McPherson*, 51 ECAB 441 (2000).

Accordingly, the Board finds that appellant has not met her burden of proof in this case, as she has not submitted reasoned medical opinion explaining why her recurrence of disability beginning November 22, 2001 was caused or aggravated by the July 7, 1995 employment injury.⁹

The October 24, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 15, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member

⁹ The Board notes that with her appeal to the Board appellant submitted addition evidence. The Board has no jurisdiction to review this evidence for the first time on appeal. 20 C.F.R. § 501.2(c).